



## **Agricultural Marketing Service**

### **7 CFR Part 58**

**[Doc. No. AMS-DA-22-0064]**

**RIN 0581- AE20**

### **Plant Records to Include Grade Label Butterfat Testing**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document invites comments on a proposed amendment to the plant records requirement for the Agricultural Marketing Service (AMS) Dairy Grading and Inspection program. The proposal would allow butterfat tests to be performed at an in-house or approved third party laboratory and add a requirement for plants to maintain and make such records available for examination by a United States Department of Agriculture (USDA) inspector. This amendment would increase efficiency by conforming to current industry practice.

**DATES:** Comments on proposed amendments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be assured of consideration. Comments on the proposed information collection and the associated burden must also be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments on this proposed rule. Comments may be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number, date, and page number of this issue of the **Federal Register**. Written comments may be submitted via mail to USDA/AMS/Dairy Programs, Stop 0225-Room 2530, 1400 Independence Avenue, SW, Washington, DC 20250-0225. All comments submitted in response to this

proposed rule will be included in the record and will be made available to the public.

Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Matthew M. Siedschlaw, Grading and Standardization Division, Dairy Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2756-South Building, 1400 Independence Avenue SW, Washington, DC 20250-0230; Telephone: (202) 937-4901; Email: *Matthew.Siedschlaw@usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Secretary of Agriculture is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended (7 U.S.C. 1621, et seq.), to provide voluntary Federal dairy inspection and grading services to facilitate the orderly marketing of and enable consumers to purchase high quality dairy products. Plants participating in the voluntary, fee-based AMS Dairy Grading and Inspection Program process milk into dairy foods that enter commerce as retail products, ingredients for further processing, purchases for Federal food assistance programs, and exports to other countries. Services provided by the program enhance the marketability and add value to dairy and foods that contain dairy. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to be graded against official quality standards and specifications established by AMS. Dairy products tested and graded by AMS have certificates issued describing the product's quality and condition.

Historically, when the Grading and Inspection Program was implemented, the quality of butter was inconsistent, and quality-control testing by USDA was necessary to ensure a consistent product for the market. Today, plants more consistently manufacture high-quality butter products and maintain the butterfat standard necessary to be granted a USDA grade label for butter.

Currently, USDA inspectors or designated plant personnel perform tests of butter samples that have been selected by a USDA inspector for quality control on randomized batches of finished product pursuant to 7 CFR 58.338. Testing frequency varies by the volume of butter processed and whether a batch is randomly selected. Typically, USDA conducts monthly or weekly testing depending on the volume of butter processed. It is also current industry practice for plants to perform routine internal tests on their butter products to ensure quality and compliance with composition standards. Specific requirements for these tests are outlined in 7 CFR 58.336.

During manufacturing it is normal to have fluctuations in butterfat composition at different stages in butter making, and consequently test results may not be consistent throughout the process. Therefore, butter processing facilities continually monitor butterfat composition throughout production and make necessary adjustments to maintain the 80% butterfat required for butter (7 CFR 58.305). The facility maintains these monitoring records as part of its internal quality program and testing requirements.

Under the current Dairy Grading and Inspection program, USDA conducts a single butterfat test at the time of grading, which provides a limited perspective on overall butterfat composition of butter manufactured by the plant.

The proposed amendments would exempt plants from butterfat testing administered by a USDA inspector and allow in-plant quality control testing to satisfy butterfat testing requirements. The proposal would replace testing performed by a USDA inspector at the time of grading with a review of a plant's testing records. A records review of a plant's routine testing rather than a single-point test would provide a more accurate picture of whether the plant's butter products meet quality standards. It would also reduce costs to a facility by eliminating duplicate butterfat testing by a USDA inspector that it currently must pay for. As explained in the Regulatory Flexibility

Analysis below, AMS estimates adopting a records review would save participating plants \$4,560 to \$31,450 annually.

Currently, the final butter product must contain a minimum of 80% butterfat by weight for it to comply with the regulations. That would not change as a result of the proposed amendment. However, under the proposal, AMS would annually review each plant's butterfat test records to gauge the facility's compliance with the regulations. Butterfat tests are already conducted as a normal, standard business operating procedure by plants engaged in the manufacture of butter. If a facility is out of compliance, AMS would perform more frequent reviews to see what preventative and corrective actions are being taken. Failure to rectify the problem could result in ineligibility to use the USDA Grade Label shield on products produced by the facility.

Records inspected would include plant records of butterfat tests performed as required under 7 CFR 58.336, and analysis of records. The change to the recordkeeping requirements would apply to records kept in the regular course of business by the plant. As records would be reviewed on-site by USDA inspectors, plants would not be required to submit information to the agency.

Finally, AMS is proposing a revision of an administrative nature to correct a misspelling in the regulations. A proposed revision to § 58.336(a) would replace the word "insure" with "ensure."

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35), AMS has requested approval of new information collection and recordkeeping requirements for the Dairy Grading and Inspection Program and comments are invited on this new information collection. All comments received on this information collection will be summarized and included in the final request for Office of Management and Budget (OMB) approval.

*Title:* Regulations Governing the Review of Butterfat Testing Records for the Dairy Grading and Inspection Butter Program.

*OMB Number:* 0581-NEW

*Expiration Date of Approval:* This is a NEW collection.

*Type of Request:* Approval of New Information Collection.

*Abstract:* The Dairy Grading and Inspection program is a voluntary, fee-based program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621-1627). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. Under the program, a plant can submit to grading and inspection of its butter products by a USDA grader following the U.S. Grade Standards to ensure each product meet the U.S. grade requirements. This program provides uniform quality of dairy products in the marketplace. The information collection requirements in this request are essential to carry out the intent of the AMA—to ensure that dairy products are produced under sanitary conditions and buyers are purchasing a quality product.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 2.5 hours per year.

*Recordkeepers:* Butter manufacturers.

*Estimated Number of Recordkeepers:* 17.

*Estimated Number of Hours per Recordkeeper:* 2.5 hours.

*Estimated Total Annual Burden on Recordkeepers:* 42.5 hours.

The information collection seeks to replace testing by USDA inspectors with an annual review of a plant's butterfat testing records. The review encompasses plant records of butterfat tests performed as required under 7 CFR 58.336, and analysis of records. Plants seeking USDA inspection for butter grading conduct their own routine, audited, butterfat tests to ensure quality and compliance with composition standards. The

information sought in this collection is contained in records kept in the regular course of business by the inspected facility. Records would be reviewed on-site by a USDA inspector. The facility would not be required to submit information to the agency.

### **E-Government Act**

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **Executive Orders 12866 and 13563**

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

### **Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), AMS has considered the economic impact of the action on small entities. Accordingly, AMS has prepared this Regulatory Flexibility Analysis (RFA).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration's definition (13 CFR 121.201) of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small butter manufacturers processors are defined as having 750 or fewer employees. Seventeen plants producing grade label butter in the U.S. participate in the Grade Label Program. According to AMS calculations, about 12, or approximately two-thirds, are operated by dairy farmer cooperatives, while the remaining 5 are independently owned. AMS estimates that six of 17 the participating butter processors would be considered small businesses.

AMS has determined that establishment of this proposal would not have a significant economic impact on small entities. The Dairy Grading and Inspection Program is a voluntary program. Small businesses have the option to participate. The proposed change would not unduly or disproportionately burden small butter processing entities. It would reduce costs to small businesses by eliminating a redundant butterfat test currently performed by USDA. AMS estimates the cost to plants for meeting USDA butterfat testing requirements ranges from \$5,000 to \$32,000 annually. The significant cost difference depends on whether the plant has an approved onsite laboratory or must ship samples to an outside AMS laboratory, and the frequency of butterfat samples submitted for testing.

The change would replace the USDA-inspector's test with a review of records of butterfat tests that manufacturers currently conduct in the normal course of business to ensure quality and compliance with composition standards. The plants would be charged

for the inspectors' time to conduct the records review, estimated to take four hours annually. At an hourly rate of \$110, a records review would cost the plant approximately \$440. This results in annual net saving to plants ranging from \$4,560 to \$31,560.

Program provisions would be applied uniformly to both large and small businesses and would not be expected to burden small entities unduly or disproportionately.

#### **Executive Order 13175**

This proposed rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### **List of Subjects in 7 CFR Part 58**

Dairy product, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 58 as follows:

#### **PART 58 – GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS**

1. The authority for part 58 continues to read as follows:

**Authority:** 7 U.S.C. 1621-1627.

2. Amend § 58.148 by adding paragraph (h) to read as follows:

**§ 58.148 Plant records.**



\* \* \* \* \*

(h) Butterfat test records. Retain for 12 months.

3. Amend § 58.336 by revising paragraphs (a) and (b) to read as follows:

**§ 58.336 Frequency of sampling for quality control of cream, butter and related products.**

(a) *Microbiological*. Samples shall be taken from churnings or batches and should be taken as often as is necessary to ensure microbiological control.

(b) Sampling and testing. (1) Composition. Sampling and testing for product composition shall be made on churns or batches as often as is necessary to insure adequate composition control. For in-plant control, the Kohman or modified Kohman test may be used.

(2) Sampling. Butterfat sampling may be performed as part of an in-plant quality program.

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**Erin Morris,**

*Associate Administrator,*

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